

## PART 199.8 - DOUBLE COVERAGE

**(a) Introduction.**(1) In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

“A benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in or covered by any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under the other plan, except in the case of a plan (Medicaid) administered under title 19 of the Social Security Act (42 U.S.C. 1306, et seq.).”

(2) The above provision is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

**(b) Double coverage plan.** A double coverage plan is one of the following:

(1) Insurance plan. An insurance plan is any plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services and supplies. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(2) Medical service or health plan. A medical service or health plan is any plan or program of an organized health care group, corporation, or other entity for the provision of health care to an individual from plan providers, both professional and institutional. It includes plans or programs for which the beneficiary pays a premium to an issuing agent as well as those plans or programs to which the beneficiary is entitled as a result of employment or membership in, or association with, an organization or group.

(3) Exceptions. Double coverage plans do not include:

(i) Plans administered under title XIX of the Social Security Act (Medicaid);

(ii) Coverage specifically designed to supplement CHAMPUS benefits (a health insurance policy or other health benefit plan that meets the definition and criteria under supplemental insurance plan as set forth in Sec. 199.2(b));

(iii) Entitlement to receive care from Uniformed Services medical care facilities;

(iv) Certain Federal Government programs, as prescribed by the Director, OCHAMPUS, that are designed to provide benefits to a distinct beneficiary population and for which entitlement does not derive from either premium payment of monetary contribution (for example, the Indian Health Service); or

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(v) State Victims of Crime Compensation Programs.

**(c) Application of double coverage provisions.** CHAMPUS claims submitted for otherwise covered services or supplies and which involve double coverage shall be adjudicated as follows:

(1) CHAMPUS always last pay. For any claim that involves a double coverage plan as defined above, CHAMPUS shall be last pay. That is, CHAMPUS benefits may not be extended until all other double coverage plans have adjudicated the claim.

(2) Waiver of benefits. A CHAMPUS beneficiary may not elect to waive benefits under a double coverage plan and use CHAMPUS. Whenever double coverage exists, the provisions of this Section shall be applied.

(3) Last pay limitations. CHAMPUS may not pay more as a secondary payer than it would have in the absence of other coverages. Application of double coverage provisions does not extend or add to the CHAMPUS benefits as otherwise set forth in this and other Sections of this part.

(4) Lack of payment by double coverage plan. Amounts that have been denied by a double coverage plan simply because a claim was not filed timely or because the beneficiary failed to meet some other requirement of coverage cannot be paid. If a statement from the double coverage plan as to how much that plan would have paid had the claim met the plan's requirements is provided to the CHAMPUS contractor, the claim can be processed as if the double coverage plan actually paid the amount shown on the statement. If no such statement is received, no payment from CHAMPUS is authorized.

**(d) Special considerations.** (1) CHAMPUS and Medicare.—(i) **General rule.** In any case in which a beneficiary eligible for both Medicare and CHAMPUS receives medical or dental care for which payment may be made under Medicare and CHAMPUS, Medicare is always the primary payer. For dependents of active duty members, payment will be determined in accordance to paragraph (c) of this section. For all other beneficiaries eligible for Medicare, the amount payable by CHAMPUS shall be the amount of the actual out-of-pocket costs incurred by the beneficiary for that care over the sum of the amount paid for that care under Medicare and the total of all amounts paid or payable by third party payers other than Medicare.

(ii) **Payment limit.** The total CHAMPUS amount payable for care under paragraph (d)(1)(i) of this section may not exceed the total amount that would be paid under CHAMPUS if payment for that care were made solely under CHAMPUS.

(iii) **Application of general rule.** In applying the general rule under paragraph (d)(1)(i) of this section, the first determination will be whether payment may be made under Medicare. For this purpose, Medicare exclusions, conditions, and limitations will be the basis for the determination.

(A) For items or services or portions or segments of items or services for which payment may be made under Medicare, the CHAMPUS payment will be the amount of the beneficiary's actual out of pocket liability, minus the amount payable by Medicare, also minus amount payable by other third party payers, subject to the limit under paragraph

(d)(1)(ii) of this section.

(B) For items or services or segments of items or services for which no payment may be made under Medicare, the CHAMPUS payment will be the same as it would be for a CHAMPUS eligible retiree, dependent, or survivor beneficiary who is not Medicare eligible.

(iv) Examples of applications of general rule. The following examples are illustrative. They are not all-inclusive.

(A) In the case of a Medicare-eligible beneficiary receiving typical physician office visit services, Medicare payment generally will be made. CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(A) of this section.

(B) In the case of a Medicare-eligible beneficiary residing and receiving medical care overseas, Medicare payment generally may not be made. CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(B) of this section.

(C) In the case of a Medicare-eligible beneficiary receiving skilled nursing facility services a portion of which is payable by Medicare (such as during the first 100 days) and a portion of which is not payable by Medicare (such as after 100 days), CHAMPUS payment for the first portion will be determined consistent with paragraph (d)(1)(iii)(A) of this section and for the second portion consistent with paragraph (d)(1)(iii)(B) of this section.

(v) Application of catastrophic cap. Only in cases in which CHAMPUS payment is determined consistent with paragraph (d)(1)(iii)(B) of this section, actual beneficiary out of pocket liability remaining after CHAMPUS payments will be counted for purposes of the annual catastrophic loss protection, set forth under Sec. 199.4(f)(10). When a family has met the cap, CHAMPUS will pay allowable amounts for remaining covered services through the end of that fiscal year.

(vi) Effect of enrollment in Medicare+Choice plan. In the case of a beneficiary enrolled in a Medicare+Choice plan who receives items or services for which payment may be made under both the Medicare+Choice plan and CHAMPUS, a claim for the beneficiary's normal out-of-pocket costs under the Medicare+Choice plan may be submitted for CHAMPUS payment. However, consistent with paragraph (c)(4) of this section, out-of-pocket costs do not include costs associated with unauthorized out-of-system care or care otherwise obtained under circumstances that result in a denial or limitation of coverage for care that would have been covered or fully covered had the beneficiary met applicable requirements and procedures. In such cases, the CHAMPUS amount payable is limited to the amount that would have been paid if the beneficiary had received care covered by the Medicare+Choice plan.

(vii) Effect of other double coverage plans, including medigap plans. CHAMPUS is second payer to other third-party payers of health insurance, including Medicare supplemental plans.

(viii) Effect of employer-provided insurance. In the case of individuals with health insurance due to their current employment status, the employer insurance plan shall be first payer, Medicare shall be the second payer, and CHAMPUS shall be the tertiary payer.

(2) CHAMPUS and Medicaid. Medicaid is not a double coverage plan. In any double coverage situation involving Medicaid, CHAMPUS is always the primary payer.

(3) CHAMPUS and Worker's Compensation. CHAMPUS benefits are not payable for a work-related illness or injury that is covered under a worker's compensation program.

(4) Program for persons with disabilities (PFPWD). A PFPWD eligible beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, OCHAMPUS, or designee, to be available and adequate to meet a disability related need for which a PFPWD benefit was requested. Benefits eligible for payment under a State plan for medical assistance under Title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of PFPWD benefits.

**(e) Implementing instructions.** The Director, OCHAMPUS, or a designee, shall issue such instructions, procedures, or guidelines, as necessary, to implement the intent of this section.

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